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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-1517-2015

Date of Decision: 12.08.2015

Kamaljit Singh @ Babban

.....Petitioner

Vs.

State of Punjab and Another.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rahul Rampal, Advocate
for the petitioner.

Mr. Varun Sharma, AAG, Punjab.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J. (Oral)

1) Petitioner seeks quashing of FIR No.80 dated 13.10.2013 under Section 307, 324, 382, 506, 148, 149 IPC and under Section 25, 27, 54, 59 of the Arms Act, Police Station, PAU, Ludhiana and order dated 02.06.2014 vide which petitioner was declared as proclaimed offender.

2) Respondent No.2 got registered the aforesaid FIR against the petitioner and five other co-accused. Petitioner was declared to be proclaimed offender on 02.6.2014. Co-accused of the petitioner namely Tirath Singh,

Vikramjit Singh, Harpreet Singh, Lakhwinder Singh and Sukhpreet Singh were acquitted by the trial Court vide judgment dated 31.10.2014. None of the prosecution witnesses supported the case of prosecution and co-accused of the petitioner were accordingly acquitted. Learned counsel for the petitioner has submitted that petitioner was never arrested in the case nor he was in the knowledge of pendency of the FIR nor any proclamation under Section 82 Cr.P.C. was brought to the notice of the petitioner. The order declaring the petitioner to be proclaimed offender was in contravention to Section 82(4) Cr.P.C.

3) For ready reference, the prosecution story as emerges from FIR is reproduced as here under:-

“Statement of Manprit Singh S/o S. Dharam Singh Warraich resident of House No.451-HJ Housing Board Colony, BRS Nagar, Ludhiana, age about 26 years. It is stated that I am resident of the address mentioned above and I am working in Verka Milk Plant. Today I and my friend Beant Singh s/o Gurnam Singh R/o 271 Ist Floor, Pink Flat, Rajguru Nagar Ludhiana. We on our Motor Cycle No.PB 10 CZ 8602 the RC of which is in the name of Gaurav Verma s/o Kashmiri Lal resident of 265-1-BRS Nagar went to the house of sister of Beant Singh at Barewal and in the evening at about 7:30 PM or 7:45 PM when we came back to our house at from Barewal then we stopped at Pink Park Pully, Barewal when a Swift car No. PB 10 CQ 0098 on the backside of which Sandhu was written came which was being driven by Babban resident of Barewal, Fatehpur Awana and in which Sukhpreet Singh @ Sukha s/o Baldev Singh resident of Fatehpur Awana who was holding pistol in his hand and with him Tirath Singh @ Kala s/o Kulwant Singh resident of village Barewal, Lambardar Wali Gali, Barewal and one Vicky son of Lakhwinder Singh resident of

Atam Nagar, Police Station Model Town Ludhiana and one unidentified boy whom we can identify on coming before us, stepped down from car and raising Lalkara that today we will not spare Manprit Singh and Beant Singh. On seeing them we left the motor cycle alongwith key there and ran towards the fields. From the fields Beant phoned his friend Manmohan Singh @ Mani son of Kamaljit Singh resident of House No. 422-HJ-A Housing Board Colony BRS Nagar Ludhiana from his phone and described the whole episode who said that Chaman Grewal resident of Tharika has come on his Bolero vehicle and alongwith Arashdip Singh Arsh 425, he asked us to meet in Pink Park Street. We came out of the fields and met them in Pink Park Street in Bolero and we sat in Bolero and went to see our Motor Cycle. Our Motor cycle was not there and our motor cycle numbered above was taken by them. We came back then again the same Swift Car in which all that persons were sitting, stopped their car before our Bolero car. We stopped Bolero car in Pink Park on which Manmohan @ Mani who was driving Bolero car came out of the vehicle and started asking them. Out of above car Sukhprit Singh @ Sukh who was carrying pistol in his hand started straight firing on which Mani took his hand up and the fire crossed from upside. In the mean time all the remaining persons also came out of the car on which Vicky, carrying Gandasi in his hands also gave a Gandasi blow on the left arm of Manmohan Singh @ Mani. In the mean time Sukhpreet Singh @ Sukha snatched Gandasi from Vicky and gave a blow with the intention to hit on the head of Manmohan Singh @ Mani.. Babbal gave a daang blow, carrying in his hand, to Manmohan and Manmohan @ Mani, blood stained fell down. While lying, Tirath Singh @ Kala gave 4 sword blows, carrying in his hand, on his legs and Babban also gave daang blows on his arms and hands and Lakhwinder Singh gave the Dattar blow, carrying in his hand, on the left feet of Mani and one boy unidentified who was also carrying

danda in his hand also gave danda blows. All this was seen by me while sitting in Bolero vehicle. We were afraid and had not come out of the vehicle. Manmohan @ Mani was raising an alarm of 'Bachao Bachao' but none came out and they abusing and beating Manmohan @ Mani with the intention to kill him, ran away from the spot alongwith their respective weapons. After that we got Manmohan Singh @ Mani in Medeiways Hospital for treatment where he is under treatment. The cause of enmity is that earlier also we had a minor dispute with them about which a compromise was arrived at. We were coming to you for giving the information. You have met us on the way. The statement has been recorded. Heard which is true and correct. Sd/- Manprit Singh, 98885-50513."

- 4) Learned counsel for the petitioner relies upon statement of PW-1- Manpreet Singh to contend that the involvement qua the petitioner was also declined by the witness along with others while deposing before the Court. Relevant portion of cross-examination of PW-1 Manpreet Singh is reproduced here as under:-

"XXXxxx.....It is also neither a fact nor I stated before the police that other persons also alighted from the car and at that time Vicky was having gandassi or that he gave blow of gandassi on the left cheek of Manmohan Singh or that Sukhpreet Singh snatched gandassi from Vicky and gave blow of gandassi on the head of Manmohan Singh with intention to kill him or that Babban gave blow of dang on the person of Manmohan Singh or that Manmohan Singh fell down or that Tirath @ Kala gave blow of kirpan on both the legs of Manmohan Singh or that Babban gave blow of daang on the arms and hands of Manmohan Singh or that Lakhwinder Singh gave blow of dattar on the left foot of Manmohan Singh or that unknown person gave blow of danda on the person of Manmohan

Singh or that eye witnessed the occurrence while sitting in the Bolero or that due to afraid we did not alight from the Bolero or that Manmohan Singh raised alarm, all the accused ran away from the spot with their respective weapons.....xxxXX.”

5) Similarly, PW-Manmohan Singh also resiled from his earlier stand. Relevant cross-examination of aforesaid witness is also reproduced hereasunder:-

“XXXxxxx.....It is also neither a fact nor recorded in my statement before the police that I alighted from the Bolero or that went near the Swift car bearing registration no.PB10CQ-0098 or that Sukhpreet Singh armed with pistol was present in the car or that he fired from the pistol towards me with intention to kill me or that I catch hold his hand and moved his hand towards upper side or that he fired 3-4 shots or that other person also alighted from the car or that Vicky gave blow of gandassi on my left cheek or that Sukhpreet Singh snatched gandassi from Vicky and gave blow of gandassi on my head with intention to kill me or that Babban gave blow of dang on me or that I fell down or that Tirath @ Kala gave blow of kirpan on my both legs or that Babban gave blow of daang on my arms and hands or that Lakhwinder Singh gave blow of dattar on my left foot or that unknown person gave blow of danda on me or that whose name later on I came to know as Harpreet Singh @ Laddu who is the brother of Sukha or that I raised alarm, all the accused ran away from the spot with their respective weapons in the Swift car. The attention of the witness is drawn towards his statement Mark B from portion C to C1 where it so recorded but the witness denies having made any such statement before the police. It is wrong to suggest that accused present in court namely Tirath Singh, Hapreet Singh, Lakhwinder Singh, Sukhpreet Singh &

Vikramjit Singh along with their co-accused caused injuries to me on 12.10.2013.....xxxxXXXX.”

6) PW-3 Daman Grewal also did not support the prosecution case.

Relevant cross-examination of the witness is also reproduced here as under:-

“XXXxxxx.....It is also neither a fact nor I reorded in my statement before the police that thereafter Manmohan Singh alighted from the vehicle and ran away from the spot or that I also ran away from the spot or that later on I came to know that Sukha Barewal and other accused gave beatings to Manmohan Singh who met me later on in Mediciti Hospital. The attention of the witness is drawn towards his earlier statement Mark C portion B to B1 but the witness denied having made such a statement to the police. In this case my statement was not recorded by the police. I do not know the accused present in court. It is wrong to suggest that on 15.01.2014 police recorded statement Mark C of mine at my instance or that read over the same to me or that I admitted the same as correct.....xxxxXX.”

7) While acquitting co-accused, vide judgment dated 31.10.2014, the Court observed in the following manner:-

“XXXxxxxx.....

5. In order to prove its case, the prosecution has examined PW1 Manpreet Singh, complainant, PW2 Manmohan Singh, injured/eye witness and PW3 Daman Grewal, eye witness. However, all these witnesses did not support the case of prosecution and turned hostile. Summons to PW Beant Singh, another eye witness, sent on so many occasions, but whereabouts of PW Beant Singh could not be known and despite grant of last opportunities, the prosecution failed to conclude its evidence. Finding no

justification to adjourn the case further for evidence of prosecution, the evidence of prosecution was closed by order.

6. *Since there was no incriminating evidence appearing in the evidence led by the prosecution, recording of statements of accused u/s 313 Cr.P.C. dispensed with.....xxxXXX.*

8. *Suffice, this case is of no evidence against the accused. Present case was registered, on the basis of statement of Manpreet Singh, complainant. However, this star witness while appearing as Pw1 did not support the case of prosecution and turned hostile. He did not identify the accused, who had inflicted injuries to Manmohan Singh. This witness, while appearing into witness box deposed that he does not know anything about this case. The accused present in the court never attacked him. The accused present in court never fired shots on them. Thereafter, learned Addl. PP for the state requested that the witness is suppressing the truth and on his request, the witness was declared hostile. Thereafter, learned Addl. PP for the state was given ample opportunity to cross examine the witness. Thereafter Learned defence counsel put several questions to the witness in question answer form, which can be put in cross examination, but he failed to elicit any incriminating evidence from the mouth of PW1 Manpreet Singh against the accused.*

9- *Similarly, PW2 Manmohan Singh, alleged victim/injured/eye witness of the occurrence did not support the case of prosecution and turned hostile. He categorically stated that on 12.10.2013 accused present in court never attacked him nor caused any injuries to him. Police never recorded his statement. PW3 Daman Grewal also did not support the case of prosecution and stated that no occurrence took place in his presence. Thus, nothing has come in the testimony of both these witnesses favourable to*

the case of prosecution. On request of Ld. Addl. PP for the state, the witnesses were declared hostile. Thereafter, the Ld. Addl. PP for the state was given ample opportunity to cross examine the witness, but he failed to elicit any incriminating evidence from the mouth of PW1 Manpreet Singh against the accused. As observed above that the prosecution failed to procure presence of other eye witness namely Beant Singh, despite grant of last opportunities. Rather, the report has come on the summons that his whereabouts are not known.

10- From the aforesaid evidence led by the prosecution and discussed above, it is clear that the PW1 Manpreet Singh, complainant, PW2 Manmohan Singh, injured witness/victim examined by the prosecution and PW3 Daman Grewal have resiled from their statements, made before the police and did not corroborate the prosecution version. Though, they were confronted with specific portions of his statements, but they refused to own it. It is cardinal principle of criminal jurisprudence that the prosecution has to prove its case with the help of cogent and convincing evidence, beyond shadow of reasonable doubt and mere on furnishing of report under section 173 Cr. P.C is not sufficient to convict the accused persons. But in the present case, the prosecution failed to bring on record even an iota of incriminating evidence against the accused, showing involvement of accused, in the commission of offence, alleged to have been committed by them. As such, this court has left with no other option but to acquit the accused of the charges framed against them.

11- For the aforesaid reasons, I have come to the conclusion that prosecution has failed to prove the guilt of accused under sections 307, 324 read with section 149 IPC, 506, 148 and 382 IPC. Resultantly, the accused persons are acquitted of the charges framed against them, by extending benefit of doubt.....xxxXXXX”

8) Ld. Counsel has submitted that all the prosecution witnesses did not support the prosecution case rather they have not supported the involvement of the petitioner also in the case. Even if, de novo trial is allowed in the context of complicity of the petitioner being proclaimed offender, the witnesses will not depose against him as they had already been declared hostile in the main case, rejecting the role of the petitioner in the commission of crime outrightly. Learned counsel for the petitioner relies upon **2011 Volume 2 R.C.R. (Criminal) 453, titled as “Sudo Mandal @ Diwarak Mandal Versus State of Punjab”** to seek acquittal on the grounds of acquittal of co-accused and also in view of material witnesses not supporting the prosecution case vis-à-vis the petitioner also.

9) Ld. counsel for the petitioner further submitted that in the light of aforesaid depositions of material witnesses during trial, it can be found that prosecution witnesses, if given chance, would not depose against the petitioner in any manner as they have already uprooted the prosecution story in toto. It would be an exercise in futility to proceed against the petitioner on the same set of evidence. The ratio laid down in **Sudo Mandal @ Diwarak Mandal’s case (supra)** can be relied in the present case on the ground that if two or more persons are tried in a case and have been acquitted, then the prosecution against the persons who will surrender subsequently deserves to be quashed because if the intention is the same against the subsequent persons as well, then the continuation of proceedings would result in wastage of precious time of the Court and would incur unnecessary vagaries of trial and would burden State Exchequer unnecessarily. Ld. counsel makes reference to the observations made in **Gurpreet Singh @ Khinder Versus State of Punjab, 1995 (2) RCR (Criminal) 127.**

10) It is equally true that the Court has to spring entire evidence and does not extend the threat of falsity to universal acquittal. The Court must examine entire prosecution evidence in its correct perspective before concluding the effect of acquittal. Reference can be made on **2014 (4) Law Herald 2970 Munfed and Another V/s State of Haryana and 2013 (6) SCC 428 Yanab Sheikh @ Gagu V/s State of West Bengal.**

11) It is also true that if the chances of conviction are bleak on the ground that no witness has come forward to depose against the petitioner. In such a situation even if the allegations are taken to be on their face value and accepted in their entirety, the same would not result in any logical end and would be a futile exercise to continue with the proceedings particularly when the co-accused already stood acquitted on same set of allegations. Petitioner's claim of parity can be considered with that of co-accused, if nothing incriminating in addition to the material already existed against the co-accused has come on record. Petitioner being a proclaimed offender will not come in the way of quashing the FIR in view of **2013(1) RCR (CrI.) 310, Jaswinder Singh Vs. State of Punjab and Another** in such an eventuality.

12) Taking into consideration all the necessary pros and cons of the situation, this Court comes to this conclusion that if there exists no incriminating material against the petitioner over and above the evidence on the basis of which co-accused have been acquitted, then the trial court would be obligated to treat the case of the petitioner at par with the acquitted co-accused. In view of the circumstances of the case, trial Court has to be given a chance to appraise the evidence against the petitioner.

13) In this situation, petitioner can be protected by means of interim direction that he is directed to appear before the trial Court within two weeks

from the date of obtaining certified copy of this order and in the event of his appearance, trial Court is directed to admit him on bail and thereafter proceed in the manner as discussed above. If no incriminating evidence comes on record, then trial Court is directed to consider the case of the petitioner on parity with others forthwith.

14) Disposed of.

(RAJ MOHAN SINGH)
JUDGE

August 12, 2015
SwarnjitS